

COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CHAD HOGAN,

Plaintiff,

vs.

CIVIL ACTION AT LAW
CASE NO. 2:05CV687

CITY OF MONTGOMERY, et al.,

Defendants.

* * * * *

DEPOSITION OF LEONARD KIRK PELHAM, taken
pursuant to stipulation and agreement before
Mallory N. McCutchin, Court Reporter and
Commissioner for the State of Alabama at Large,
in the Law Offices of Thomas, Mean, Gillis &
Seay, 3121 Zelda Court, Montgomery, Alabama, on
Monday, October 3, 2005, commencing at
approximately 1:09 p.m.

* * * * *

1 regarding particular detail. But it might be
2 easier just to start out just by asking to
3 recite as best you can, what your first
4 memory is of that night and who you spoke to
5 and how the night developed from the moment
6 you first heard about the burglary call at
7 Arnaud Meats that night. And just if you
8 would, just tell me everything you remember
9 about it.

10 A. All right. I was sitting at any computer
11 eating a taco. The call went out -- or the
12 alarm went out to Arnaud's Quality Meats. It
13 was storming real bad. I didn't think
14 nothing of it. The alarm had been going off
15 all night, other alarm.

16 Q. Keep talking. I'm listening. I'm just going
17 to close these blinds.

18 A. And a K-9 officer, Officer Gordon, got on the
19 radio, advised he was the first one -- or he
20 was the first one to respond to the scene.
21 Advised he saw a vehicle in the parking lot.
22 I can't remember what -- what kind of vehicle
23 it was -- with a few -- two or three black

1 males inside. Stated he pulled into the
2 parking lot, and the vehicle drove off
3 down -- headed down Wares Ferry Road, I
4 believe, or they cut through the trailer park
5 behind the store, headed to Wares Ferry
6 Road. He -- he -- he then advised he was
7 following the car, and there were a couple of
8 other units that said that they were en route
9 to the store.

10 And I believe the next unit on the scene
11 was Officer Fike or Officer Forbus. I'm not
12 -- not to sure. And they advised that the
13 window on the right side of the business had
14 been busted out. At that time, Officer
15 Gordon gave his whereabouts and stated that I
16 believe he stated he was initiating a traffic
17 stop, and he got some other units with him to
18 assist him. At that time, the vehicle was on
19 Wares Ferry Road, refusing to stop. And that
20 ended up -- the vehicle he was pursuing ended
21 up, I believe, running into a fence or a tree
22 at Pelzer Avenue and Wareingwood Avenue.

23 Q. Yes, sir.

1 A. While all this unfolded, I about that time --
2 well, when the officer said that the window
3 had been busted out, I had left the police
4 department, started in that direction.

5 Q. Let me stop you. You talked to either
6 Officer Fike or Forbus on the radio before
7 you got to the scene; is that correct?

8 A. No. I heard them on the channel one radio
9 saying that the window had been busted out.

10 Q. But you didn't speak with them at that point?

11 A. But I didn't speak with them at that point.

12 Q. I'm sorry. Continue.

13 A. Once I heard that, I got in my car. Started
14 that way. While I was on my way to the
15 business, that's when the -- the suspect
16 vehicle crashed into a -- a fence.

17 About that time -- not long after that,
18 I arrived at Arnaud's Quality Meat and made
19 contact with Officer Forbus and Fike. And I
20 pulled up, just so happened to pull up on the
21 right side in front of the window, and walked
22 around to the front of the business. Officer
23 Forbus and Fike had advised me that it didn't

1 look like anything had been -- been tampered
2 with. Didn't look like anything had been
3 gone. And they had already -- they had
4 requested a key holder to come out. The
5 owner of the business to come out and verify
6 if -- if there had been anything missing or
7 if there had been a burglary. At that time
8 Anthony Arnaud, the owner of Arnaud's Quality
9 Meat, pulled up; and I made contact with him,
10 and asked him to go into his store and
11 inventory it. See if anything had been
12 missing. He went inside, come back out and
13 told me that he left the window open, because
14 the window wasn't broken. He left it broken
15 because the -- his air conditioner was broke
16 and he didn't want it to be real hot the next
17 morning. Had something going on early the
18 next morning. Some kind of breakfast or
19 something. Didn't want it to be real hot so
20 he left the window open. And nothing was
21 missing. He said he had some cash laying on
22 the counter, it was still there. He believed
23 nobody -- nobody had gotten in at that time.

1 I got on my radio, made contact with Sergeant
2 Johnson, with my supervisor, Lieutenant Cook,
3 let him know that there wasn't a burglary and
4 that the owner had left the window up. And
5 he advised me to make contact with third-
6 shift sergeant, Sergeant Johnson, to let him
7 know that there was -- was no burglary. So I
8 then called on my radio Sergeant Johnson and
9 let him know what the owner had told me, that
10 he had left the window open, and nothing was
11 missing, didn't think anybody got in.

12 At that time, Sergeant Johnson, he got
13 irate with me like I didn't want -- didn't
14 want to work the case. Like I was trying to
15 push it off and didn't want to work it.
16 Said, you mean to tell me we got a -- we got
17 a dog bite and no burglary? And I said,
18 Well, that's what the owner is advising me.
19 You know, he left the window open. And it's
20 raining, you know, raining real hard. If
21 anybody had got in, there would be foot
22 prints all over the place. Didn't hear
23 anything back from him at that time.

1 other, or was this something over the walkie-
2 talkie or --

3 A. They were -- it was over the I-Link, the
4 radios you can --

5 Q. So you could hear the conversation that's
6 incoming?

7 A. Right. Kind of like a Nextel, you can --

8 Q. I gotcha. Okay. Go ahead.

9 A. At that time, Officer Gordon -- I mean, I'm
10 assuming Lieutenant Caulfield called Officer
11 Gordon because Officer Gordon said he was
12 going to do another statement. He then typed
13 another statement. Said that he had pulled
14 into the parking lot, observed a vehicle in
15 the parking lot, and a black male standing
16 next to the vehicle by the window, I believe.

17 Q. I'm going to stop you for a second. What did
18 the first statement say as opposed to the
19 second statement? What was the major
20 difference between the two?

21 A. The first statement said I pulled into the
22 parking lot, observed a vehicle which
23 passenger -- I observed a vehicle in the

1 parking lot. The passenger's door then
2 closed and the vehicle drove off. The second
3 statement said, I pulled in the parking lot,
4 observed a vehicle, and a black male standing
5 outside the vehicle next to the window, which
6 was believed to be the point of entry. And
7 that was the only two things that changed.

8 Q. All right.

9 A. At that time, Officer Gordon gave me a
10 statement. I read the statement. And still,
11 the elements weren't there. It was a small
12 twist getting closer to -- to the elements.
13 But it -- it wouldn't -- wouldn't support
14 burglary.

15 So then I called Lieutenant Cook, let
16 him know the statement, you know, the
17 elements still weren't there. And -- and I'm
18 assuming he called Lieutenant Caulfield
19 then. I -- I didn't hear that conversation.
20 However, he said that Officer Gordon was --
21 was going to come back and fix it. So
22 Officer Gordon come back and did a third
23 statement. And the third statement, I had

1 photographed him. Got -- got some -- some
2 information on him as to address, where he
3 works, that type of thing. And then I went
4 back to Mr. Arnaud. I -- after I had
5 processed Mr. Hogan, I prepared the burglary
6 warrant. And was getting ready to take
7 Mr. Arnaud down to the warrant clerk's office
8 to secure the warrant against Mr. Hogan. And
9 at which time he said, listen. Just show me
10 where to -- where to go and -- so I can get
11 out of here. So I took him to the warrant
12 clerk's office. He secured the warrant
13 against Mr. Hogan for burglary.

14 And after the warrant was finished, I
15 went down to the warrant clerk's office, got
16 the warrant, executed it, transported
17 Mr. Hogan to the county jail, and did my
18 daily activity report. Whenever you arrest
19 somebody, just put the details of the -- what
20 happened and what you charged him where.
21 That's pretty much it.

22 Q. All right. You said earlier that Officer
23 Gordon typed out three separate statements.

1 Do you allege that he said anything false in
2 the statements?

3 A. After the first one, yes.

4 Q. What do you say was false?

5 A. Well, on the -- and I have a copy of the
6 tape -- the tape, our dispatch tape. When he
7 pulled into the parking lot, you know, he
8 said just what he saw see. 150, I believe is
9 his unit number. 150, I'm pulling into the
10 parking lot. There's a vehicle in the
11 parking lot. Subject just closed the door of
12 the vehicle, drove off. That's just what he
13 saw.

14 And I knew then before I got to the
15 business, based on what he saw, we were
16 either going to have to get a confession out
17 of Mr. Hogan or his friends or some kind of
18 property missing from the business. Or, you
19 know, maybe an identifiable witness.

20 Q. On the tape transcript, did he say that's all
21 I saw or --

22 A. He said --

23 Q. -- did he simply say I saw someone getting in

1 the car?

2 A. He said 150, I -- I'm pulling into the
3 parking lot of the business now. There's
4 a -- I observed a blue or a -- the vehicle.
5 I forgot the description. I observed the
6 passenger side door close and the vehicle is
7 now leaving heading towards wherever.

8 You know, had he said -- it could have
9 been a different story had he said 150, I'm
10 pulling into the parking lot; there's black
11 male subject coming from the window or, you
12 know, standing outside the vehicle.

13 Q. Is it possible that he could have seen that,
14 just not informed dispatch of it?

15 MR. NELMS: Object to the form.

16 MS. CONNER: You can answer.

17 A. I guess anything's possible.

18 Q. Okay. Go ahead.

19 A. I mean -- I mean, I could have -- I mean,
20 either way -- either way Mr. Hogan was
21 getting charged with burglary. I mean
22 that -- you know, I'm -- I'm a two-year
23 veteran of the police department. You know,

1 wrote his final statement? I believe you
2 said you helped draft a warrant and had to
3 take it down to the warrant clerk; is that
4 right?

5 A. Right.

6 Q. And then you transported Mr. Hogan to the
7 county --

8 A. Right.

9 Q. -- county jail?

10 A. Well, in -- in between there, I'd walked
11 around to Lieutenant Cook's office, showed
12 him the final statement and, you know, talked
13 about how I didn't feel comfortable with it.
14 And, you know, who do I charge. Like I said,
15 we normally charge -- we would, had it been a
16 normal case, we would have charged all of
17 them. However, the objective was to charge
18 the guy that was bitten?

19 Q. What happened the next day --

20 MR. NELMS: Object to the form.

21 Q. -- regarding this incident?

22 A. The -- of course, it was what they call late
23 car, so I was third shift -- late car, third

1 shift detective. So the next day, when I --
2 when I got home about seven o'clock, I guess,
3 that morning, maybe a little later, maybe a
4 little earlier, I was in the bed. My -- one
5 my sergeants, Sergeant Tatum, calls me on the
6 phone. And I asked -- he said, why in the
7 hell didn't you charge all them guys with the
8 burglary? And he's jumping down my throat
9 about it because he had read my -- read my
10 daily activity report, you know, what
11 happened. And I told him, you know, exactly
12 what happened. And he said, Well, hang on
13 Kirk. This -- this is serious. Let me go
14 around to Randy Jones' office, which is
15 property lieutenant. So they -- he transfers
16 the call to Randy's office and they got me on
17 speaker phone. Sergeant Tatum says well,
18 tell me -- tell me exactly what happened,
19 now. And I told him, you know, what happened
20 the night before. And they said they would
21 take care of it. And I went back to bed.

22 MR. WHITEHEAD: Okay. Let's take a
23 short break just a second.

1 you were speaking with him?

2 A. Possibly Frank Koscho, another detective.

3 Q. On how many different occasions?

4 A. One, if any.

5 Q. That one conversation that Mr. Koscho was
6 present on, what was said during that
7 conversation?

8 A. Well -- and I'm not sure he was. But it
9 was -- if -- if it was, I want to say he was
10 in there when I -- I want to say he was in
11 there when I was trying to get Mr. Arnaud to
12 sign a denial of prosecution form. Meaning
13 he go home, Mr. Hogan go home, the whole
14 thing be done with.

15 Q. Did you -- is this a form you fill out? What
16 is the denial of prosecution form?

17 A. It's a form -- it's pretyped and you just,
18 you know, it says I -- there's a blank
19 spot you put your name -- am aware that this
20 such and such crime was committed and I don't
21 want to prosecute Chad Hogan, pretty much.

22 Q. And you filled one of those out and --

23 A. No, I did not. I think I had one, and Mr.

1 Arnaud at that time -- I think we -- I read
2 it to him. And that's when he told me that
3 there had -- a crime of, you know, burglary
4 didn't happen. He didn't want to sign it
5 because it's -- it said something like -- I
6 can't remember how it's worded but I, Anthony
7 Arnaud, knowing that the crime of burglary
8 was committed at my business and this subject
9 is in custody. I do not wish to prosecute.
10 He said that there was no burglary. There's
11 no crime been committed. He just wanted to
12 go home.

13 Q. So he refused to sign the statement?

14 A. I didn't push it on him. He -- yeah, pretty
15 much, yeah.

16 Q. Mr. Pelham, do you contend that any of your
17 supervisors ever ordered you to secure a
18 warrant against Chad Hogan?

19 A. Yeah.

20 Q. Tell me which ones and tell me how so.

21 A. Well, I only have one that -- that when
22 Lieutenant Cook gave me an order to work the
23 case, which everything in working a case is

1 in the Montgomery County Detention Facility.
2 As to your first sentence that the owner of
3 the business was -- had been talked to by
4 Lieutenant Caulfield, how do you know that
5 Lieutenant Caulfield talked to Mr. Arnaud?

6 A. He had told me. When I was around in
7 Lieutenant Cook's office, when I had made my
8 way back around to Mr. Arnaud he had told
9 me -- he -- Mr. Arnaud was sitting in one of
10 the supervisor's office, and all the K-9
11 officers were -- there's two desks out in the
12 hallway and the chairs, and that's where they
13 kind of all hang around when they're
14 waiting. When I come back around from
15 Lieutenant Cook's office, they were all in
16 that area. And he said that he was talking
17 with -- he didn't know his name, I don't
18 think. But he said your lieutenant, which it
19 was Lieutenant Caulfield -- my direct
20 lieutenant was Cook, but he was speaking of
21 Lieutenant Caulfield.

22 Q. How do you know he was speaking of Lieutenant
23 Caulfield?

1 you a document that's been marked as
2 Defendant's Exhibit #3. And that, I believe,
3 is the affidavit that was signed by
4 Mr. Arnaud in connection with the arrest
5 warrant. I've got two other documents that
6 I'm going to mark as Defendant's Exhibit #5
7 and Defendant's Exhibit #6. Ask you to look
8 at those and see if you recognize those.

9 A. Yes.

10 Q. Okay. Can you tell me what #5 and #6 are
11 real quick?

12 A. The warrant of arrest and the complaint that
13 goes along with the affidavit?

14 Q. Okay. As to Exhibits #3, #5, and #6, did you
15 prepare each of those documents?

16 A. Yes, I did.

17 Q. Okay. Are there any false statements in
18 those documents that you prepared?

19 A. Yes.

20 Q. Can you tell me what are false statements in
21 those documents?

22 A. The defendant did knowingly --

23 Q. Tell me which document you're referring to as

1 we go, too, please, sir.

2 A. Document #3.

3 Q. Okay. Which one is #3. I confuse myself.

4 A. Affidavit.

5 MS. CONNER: Affidavit.

6 Q. All right. On #3. I'm sorry. I was --

7 A. The details of offense.

8 Q. Okay. And just for the record, tell me
9 specifically what statement you're saying is
10 a false statement.

11 A. The defendant did knowingly enter or remain
12 unlawfully in the building of.

13 Q. Okay. Anything improper on Exhibit #5, or
14 are there any false statements on Exhibit #5?

15 A. Knowingly enter or remain in the building of
16 another, his name, with intent to commit a
17 crime therein, theft of property.

18 Q. Okay. Exhibit #6, warrant of arrest.

19 A. Fact that he was charged with the burglary.

20 Q. Well, he was charged with the burglary,
21 wasn't he?

22 A. Right. That's what I'm saying. The -- the
23 charge, I mean, the whole warrants.

1 Q. Okay. So you're saying that you knowingly
2 prepared documents to effectuate an arrest
3 that had false statements in them?

4 A. Well, the documents are already prepared.
5 They're pretyped. I just go in and click
6 burglary third, affidavit, put in Mr. Hogan's
7 information. Mr. Arnaud, that's when I take
8 him to the warrant clerk's office and he
9 secures a warrant.

10 Q. Okay. On Defendant's Exhibit #3, you said
11 the statement, The defendant did knowingly
12 enter or remain unlawfully in a building.
13 And you said that's a fault statement?

14 A. Right.

15 Q. You typed that statement on this form, did
16 you not?

17 A. No. It's pretyped. I put in 425 North
18 Eastern Boulevard, Montgomery, 36106,
19 Arnaud's Quality Meat.

20 Q. What else did you put in on this document?

21 A. That's it.

22 Q. You put in a charge on this document?

23 A. I put in 425 North Eastern Boulevard. Charge

1 is already there. You double click it on the
2 computer, and it prints it out for you. You
3 put in Chad Lamar Hogan, 425 North Eastern
4 Boulevard, Montgomery, Alabama.

5 Q. Did you know what this document was going to
6 say before you had it printed out?

7 A. Yes, I did.

8 Q. And you printed it out with the purpose of
9 Mr. Arnaud signing it?

10 A. Yes, I did.

11 Q. Okay. Mr. Pelham, you stated earlier, I
12 believe that you had been a police officer
13 for -- you were a police officer for a little
14 over two years, is that correct?

15 A. Right. Yes.

16 Q. Did you ever have problems articulating full
17 detail in your reports?

18 A. No, I did not.

19 Q. You never had to go back and redo a report?

20 A. No, I did not.

21 Q. Ever seen anybody besides this incident where
22 somebody had to go back and redo a report
23 because they didn't put enough detail in it?

1 he held?

2 A. In the auto -- auto -- one of them was in the
3 auto theft office.

4 Q. Okay. And number three?

5 A. Was in the holding cell in the main -- in the
6 general property office.

7 Q. And where is your office located?

8 A. In the general property office.

9 Q. Okay. Okay. You said you had several
10 conversations with suspect number two and
11 three, correct?

12 A. They are -- the -- other than Mr. Hogan?

13 Q. Right.

14 A. Yeah. Yes.

15 Q. You also said that, I believe if I recall,
16 that when you -- you heard the call come in
17 for Officer Gordon when he arrived at
18 Arnaud's. And, I believe, did you say you'd
19 read the transcript of that radio dispatch or
20 that radio report?

21 A. That -- that I have the tape, the audio.

22 Q. Okay. Okay. And you said that you knew at
23 that point you were going to need a

1 confession or something based on what he had
2 said over the radio. You said that earlier
3 in your deposition?

4 A. I know that -- right. I know that I will
5 need either a confession from the suspects or
6 property in the suspects' car, or something
7 that would link them to going inside the
8 business.

9 Q. Okay. Exactly, if you can just tell me --
10 and I think Mr. Whitehead touched on this,
11 but just for my clarification, what elements
12 do you look for to secure a burglary warrant?

13 A. Number one, you've got to enter the business
14 or the house, you know, with -- with the
15 intent to take something.

16 Q. So you have to have a confession to have
17 probable cause that somebody intended to
18 enter?

19 A. No.

20 MR. NELMS: Object to the form

21 Q. Okay. What do you look for to secure a
22 burglary warrant? What actions?

23 A. Look for evidence that somebody burglarized

1 the business. Evidence that the -- that the
2 business was entered, you know. Don't have
3 to have anything stolen from the business to
4 have a burglary, but you do have to have some
5 kind of entry, prove there was entry made.

6 Q. Have you ever charged anybody with attempted
7 burglary?

8 A. I think once or twice.

9 Q. And what kind of evidence did you look for,
10 for that?

11 A. Same. You know, intent to -- I think there
12 was a time where somebody had kicked a door
13 in and an officer pulled up before the
14 burglary could happen. I don't know.
15 Burglary tools, evidence of pry marks on the
16 door.

17 Q. Okay.

18 A. Some type of evidence.

19 Q. Okay. Then you said that when you were
20 referring -- and I can't remember the exhibit
21 numbers. It was the warrant and affidavit.
22 I believe Mr. Whitehead was just asking you
23 what on those documents was false. And you